



**OFFICE OF THE PUBLIC ACCESS COUNSELOR
FORMAL COMPLAINT**

State Form 49407 (R6 / 3-14)

PUBLIC ACCESS COUNSELOR
Indiana Government Center South
402 West Washington Street
Indianapolis, Indiana 46204
Telephone: (317) 234-0906
Toll free: (800) 228-6013
Fax: (317) 233-3091

INSTRUCTIONS: This form is to be used only when filing complaints under Indiana Code 5-14-5.
All information provided is disclosable under the Access to Public Record Act. **PLEASE TYPE OR PRINT.**

FOR OFFICE USE ONLY

Date received (month, day, year)	Complaint number	Date due (month, day, year)
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COMPLAINANT INFORMATION

Name (last, first, middle initial) Martin, Ryan, C			
Address (number and street) 130 S. Meridian Street		City Indianapolis	State IN
Telephone number (317) 444-6294		Fax number ()	E-mail address ryan.martin@indystar.com

INFORMATION ABOUT PUBLIC AGENCY DENYING ACCESS

Name of public agency Office of Indiana Attorney General Curtis Hill			
Address (number and street) 302 W. Washington Street, 5th Floor		City Indianapolis	State IN
Telephone number (317) 232-6285		Fax number ()	E-mail address Stephanie.Mullaney@atg.in.gov
Name of elected / appointed official or presiding officer responsible for the denial			

COMPLAINT (Check all that apply.)

<input type="checkbox"/> Open Door Law Violation <input type="checkbox"/> Executive Session <input type="checkbox"/> Notice <input type="checkbox"/> Other: _____	<input checked="" type="checkbox"/> Public Records Access Violation <input checked="" type="checkbox"/> Denial of Access <input checked="" type="checkbox"/> Denial of Electronic Access <input type="checkbox"/> Other: _____
<input type="checkbox"/> Request for priority status [See Indiana Administrative Code (62 IAC 1-1-3).] (Must include in narrative the reason for priority status.)	

IMPORTANT

Date denied access to public record (month, day, year) January 7, 2019	Date notified of denial of access to meeting (month, day, year)
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Please describe denial of access to meeting or public records below. Attach additional sheets if necessary. (Required)

See attached.

PLEASE ATTACH COPIES OF ANY WRITTEN DENIAL OR DOCUMENTATION CONCERNING DENIAL.

Signature 	Date (month, day, year) 1/15/19
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January 15, 2019

Luke Britt
Indiana Public Access Counselor
W470, Indiana Government Center South
402 West Washington Street
Indianapolis, IN 46204

RE: Formal complaint on Attorney General Curtis Hill's office

Mr. Luke Britt:

The Indiana Attorney General's Office is a public agency run by an elected official, Curtis Hill. The Indianapolis Star respectfully requests the Indiana Public Access Counselor's opinion regarding the office's responses to Star public records requests.

At issue is whether the office has authority to conceal records and information from the public without a relevant exemption in Indiana statute. There are at least two examples of the office ignoring state law regarding public records.

First, the office redacted the personal email addresses of Attorney General Hill and Chief Deputy Aaron Negangard from a public email. The office said the email addresses were redacted to protect the public employees' privacy. The Star maintains that such privacy can be guaranteed when public officials do not conduct public business using their private email accounts.

Second, the office redacted an extensive portion of a public email, saying it was "nonresponsive" to a request from The Star and saying The Star's request for a copy of the full, unredacted email was not reasonably particular. The Star maintains the request is particular; indeed, the public record has already been identified by the office. (It's not clear to The Star whether the office withheld even more records using this argument, but if the office did, we maintain those records are public, as well.)

Most importantly, in both examples, the office failed to cite an exemption under Indiana law that would enable the office to redact this information. Instead, the office has simply declined to provide the information.

Indiana law is clear on this topic, as is outlined in the [Handbook on Indiana's Public Access Laws](#) that contains Hill's signature: Indiana statute does not allow a public office-holder to selectively choose what he or she wishes to disclose in a public record. The law provides specific exemptions that a public official may consider if the exemption is relevant. Hill and his office have failed to cite an exemption.

The handbook also emphasizes: "When confronted with a question of interpretation, the law should be liberally construed in favor of openness."

As Indiana's top legal officer, and as a public official who routinely touts the importance of the rule of law, Hill and his office should follow the very laws summarized within the handbook that contains his signature.

For reference, we've attached our July 11, 2018, request, the office's response on Jan. 7, 2019, and the relevant communications between those two dates. We've also highlighted in yellow the relevant portions of each communication. Please let us know if we can provide any more details or records to aid in this complaint.

We are hopeful that the Indiana Public Access Counselor agrees that it's time to provide these public records in their entirety.

Sincerely,

Ryan Martin, reporter
Kaitlin Lange, reporter
Tony Cook, reporter

The Indianapolis Star
130 S. Meridian Street
Indianapolis, IN 46225
317-444-6294

July 11, 2018

Indiana Attorney General Curtis Hill:

Pursuant to the Indiana Access to Public Records Act, we hereby request the following records:

— Correspondence and information pertaining to staff turnover in the Indiana Attorney General's Office;

— Documentation relating to any public resources utilized by Attorney General Curtis Hill or his staff to facilitate his activities, travel or schedule on March 14 and March 15, 2018.

This request will be used for reporting in the public interest, and is not being made for commercial purposes. We respectfully request that you waive any fees associated with the request.

In the event that there are fees, we would be grateful if you would inform us of the total charges in advance of fulfilling our request. We would prefer the request filled electronically, by e-mail attachment if available.

Thank you in advance for your anticipated cooperation in this matter.

Sincerely,



Ryan Martin

Reporter
The Indianapolis Star
130 S. Meridian
Indianapolis, IN 46225
317-444-6294

Re: APRA - Follow-Up to July 11, 2018 Request

Martin, Ryan

Mon 8/6/2018 9:18 AM

Sent Items

To: Mullaney, Stephanie <stephanie.mullaney@atg.in.gov>;

Good morning, Stephanie —

Thank you for your email. You asked us to include greater particularity with regards to one part of one of our requests: "Correspondence and information pertaining to staff turnover rates in the Office of the Indiana Attorney General."

We're asking for any formal or informal memos, reports or other correspondence pertaining to employee turnover; employee retention; employee termination totals and/or employee termination rates from Jan. 1, 2017 to July 31, 2018. Please include such documentation circulated among Mr. Hill, Mr. Bramer, Mr. Negangard, Ms. Blackwell and/or whoever held the top human resources position in the office. It's our understanding that three or four people have held that position.

Please let me know if there are any questions.

Also, could you provide us an update on the other requests we've submitted? We anticipated some may take a little while to fulfill, but there are others — such as any copy of the sexual harassment training and any documentation certifying whether Mr. Hill took the training — that we anticipated not requiring as long to fulfill.

If it's helpful to talk on the phone, my cell is 317-490-5684. Thank you again, Stephanie.

Ryan Martin

Public Safety Reporter
The Indianapolis Star

Mobile: 317.490.5684

Office: 317.444.6294

ryan.martin@indystar.com

[@ryanmartin](#)

[facebook.com/ryanmartin87](https://www.facebook.com/ryanmartin87)

indystar.com

From: Martin, Ryan

Sent: Thursday, August 2, 2018 9:36:03 AM

To: Mullaney, Stephanie

Subject: Re: APRA - Follow-Up to July 11, 2018 Request

Hi Stephanie -- I've been out of the office but will have an answer back to you early next week. Thank you!

Ryan Martin



STATE OF INDIANA

OFFICE OF THE ATTORNEY GENERAL
302 WEST WASHINGTON STREET, IGCS 5TH FLOOR
INDIANAPOLIS, INDIANA 46204

CURTIS T. HILL, JR.
ATTORNEY GENERAL

December 19, 2018

Ryan Martin
THE INDIANAPOLIS STAR
130 S. Meridian
Indianapolis, IN 46204

Sent via email – Ryan.Martin@indystar.com

RE: Public Records Request received July 11, 2018

Dear Mr. Martin:

This letter is in response to your public records request received by our office via email on July 11, 2018. You specifically requested the following:

- 1. Correspondence and information pertaining to staff turnover rates in the Office of the Indiana Attorney General.**
- 2. Documentation relating to any state resources utilized by you or your office to facilitate your activities, travel or schedule on March 14 and March 15, 2018.**

On July 31, 2018, our office asked you to provide particularity regarding request number 1. On August 6, 2018, you provided the following particularity response regarding request number 1:

We're asking for any formal or informal memos, reports or other correspondence pertaining to employee turnover; employee retention; employee termination totals and/or employee termination rates from Jan. 1, 2017 to July 31, 2018. Please include such documentation circulated among Mr. Hill, Mr. Bramer, Mr. Negangard, Ms. Blackwell and/or whoever held the top human resources position in the office. It's our understanding that three or four people have held that position.

Request No. 1

After reviewing our records, we have found sixty-three (63) records that are responsive to your request. Of the records that were identified as responsive to your request, we are able to disclose nineteen (19) records. Within these nineteen (19) records, we have separated the disclosable information from the nondisclosable information and have enclosed the disclosable records. Specifically, we have redacted or withheld information from the disclosable records that is intra-agency or interagency deliberative materials discretionally exempt from disclosure under Ind. Code § 5-14-3-4(b)(6) and administrative information that would jeopardize a recordkeeping or

security system that is discretionarily exempt from disclosure under Ind. Code § 5-14-3-4(b)(10). Finally, we redacted personal email addresses to protect the privacy of employees. None of this redacted information falls under an Access to Public Records Act exception, so we would provide the information to you if you request it. We also redacted or withheld information from these records that is nonresponsive to your request.

We are also withholding one (1) record because it is a personal note discretionarily withheld under Ind. Code § 5-14-3-4(b)(7), and we are withholding forty-three (43) other records because they are intra-agency or interagency deliberative materials discretionarily exempt from disclosure under Ind. Code § 5-14-3-4(b)(6).

Request No. 2

Regarding your request for "documentation relating to any state resources utilized by you [Attorney General Hill] or your office to facilitate your activities, travel, or schedule on March 14 and March 15, 2018," we have calendar entry records that are responsive to your request. However, pursuant to Ind. Code § 5-14-3-4(b)(7), a public agency has the discretion to withhold a record that is considered a diary, journal, or other personal note serving as the functional equivalent of a diary or journal, and the Indiana Public Access Counselor has opined that calendar records may be exempted from disclosure under this provision. Further, we have guidance from the Indiana Public Access Counselor that this exemption in (b)(7) applies to the entire record despite the general requirement that an agency separate disclosable information from nondisclosable information. (See Advisory Opinion of the Indiana Public Access Counselor 05-FC-152 and Informal Inquiry 09-INF-7 available at <http://www.in.gov/pac/>.) It is the policy of the Office of the Attorney General (OAG) to discretionarily exempt from disclosure the calendar entries of all OAG employees, including the Attorney General, pursuant to Ind. Code § 5-14-3-4(b)(7). This policy is exercised uniformly among all requests received. Therefore, we are declining to disclose any calendar entries identified as responsive to your request.

Please also note that OAG employees who facilitate the Attorney General's activities, schedule, and travel are paid on a salary basis and do not maintain or track billable hours to document their time. Therefore, we have no other records that are responsive to this request. Further, we are not required under the Access to Public Records Act to create a record in response to a request.

Pursuant to Ind. Code § 5-14-3-8(c), our office is permitted to charge a copying fee of ten cents (\$0.10) per page. However, since the disclosable information is available in an electronic format that can be forwarded to you via email, we have waived the copying fee.

This completes our review of the records you requested. If you have any questions regarding this public records request, please feel free to contact our office.

Sincerely,



Stephanie J. Mullaney
Deputy Attorney General

Enclosure

From: "Fulton, William" <William.Fulton@atg.in.gov>

To: Curtis Hill [REDACTED] "Light, Matt J." <Matt.Light@atg.in.gov>, Aaron Negangard [REDACTED]
"Leisher, Jean Marie" <JeanMarie.Leisher@atg.in.gov>, Aaron Negangard [REDACTED] "Leisher, Jean Marie"
<JeanMarie.Leisher@atg.in.gov>, "Hill, Curtis" [REDACTED], "Negangard, Aaron" <Aaron.Negangard@atg.in.gov>

Subject: updated budget presentation

Date: Tue, 10 Jan 2017 17:50:26 +0000

Attachments: Budget_Presentation_18_19.pptx

Hello all – thanks for your time today. Attached please find the most updated version of the slides. Please let me know if you have any changes.

I would like to send this out by 2 pm. Thanks – Bill

Also – Jean Marie, I don't have an address for Kelly, so please feel free to forward this to her as well for review. Thanks for your help – Bill

Date: Fri, 19 May 2017 12:27:46 -0000

Sent from my iPhone

[illegible]

TABLE 1

Re: APRA - Follow-Up to July 11, 2018 Request

Martin, Ryan

Wed 12/19/2018 12:35 PM

Sent Items

To: Mullaney, Stephanie <stephanie.mullaney@atg.in.gov>;

Hi Stephanie — Thank you for these records. Here's my follow-up request in response to your letter:

Regarding Request No. 1:

1. We request that you provide all 63 responsive records and redact any exempt information from those records. For example, if a copy of an email were to include both disclosable and non-disclosable information, please redact the non-disclosable information but provide the rest. We'll note that Indiana's APRA law has been interpreted in favor of disclosure over non-disclosure.
2. Please also include the personal email addresses that were redacted. Note that we are also considerate of personal information we receive through public records request.
3. Your letter noted that "information from these records that is nonresponsive" were redacted. Please also include that information.
4. An email from May 19, 2017, that includes an email from May 18, 2017, contains extensive redactions. What exemption is cited for this record?
5. For the one record that was exempted under 5-14-3-4(b)(7), could you please tell me how any correspondence among more than one person would amount to the functional equivalent of a diary or journal? Diaries and journals are typically personal endeavors written for and by oneself.
6. A May 3, 2018, email references an attachment informally called "turnover report." Please provide a copy of that attachment, as well as other versions of that attachment that appeared to be contained in follow-up emails, including but not limited to an email on May 30, 2018.

Regarding Request No. 2:

- We ask that the Attorney General's Office re-consider its denial of releasing calendar entries. As Attorney Hill is the state's top legal officer and a public advocate for smart and accountable governance, his calendar entries are in the public interest.
- Were there no emails, receipts and/or other reports responsive to this request?

Thank you again for your help on this and my other past records requests, Stephanie. I have my cell (317-490-5684) if you would like to informally talk through these records in order to expedite the process or minimize any potential misunderstanding in my request.

Thank you again, and please have a good holiday.

Ryan Martin

Public Safety Reporter
The Indianapolis Star

Mobile: 317.490.5684

Office: 317.444.6294

ryan.martin@indystar.com

[@ryanmartin](#)

RE: APRA - Follow-Up to July 11, 2018 Request

Mullaney, Stephanie <stephanie.mullaney@atg.in.gov>

Fri 12/21/2018 3:10 PM

To: Martin, Ryan <Ryan.Martin@indystar.com>;

Ryan,

Please see the below responses to your eight questions (six for Request 1 and two for Request 2) below. Many of your questions had related answers, so I re-grouped the questions together accordingly and placed our response below the group of questions.

Request 1 Follow-Ups:

1. "We request that you provide all 63 responsive records and redact any exempt information from those records. For example, if a copy of an email were to include both disclosable and non-disclosable information, please redact the non-disclosable information but provide the rest. We'll note that Indiana's APRA law has been interpreted in favor of disclosure over non-disclosure.
2. A May 3, 2018, email references an attachment informally called "turnover report." Please provide a copy of that attachment, as well as other versions of that attachment that appeared to be contained in follow-up emails, including but not limited to an email on May 30, 2018."

We have provided you all of the disclosable information from records identified as responsive. For emails that included both disclosable and non-disclosable information, we separated the disclosable information and provided this information to you in the response. For example, that is why you received copies of emails, but not the attachments (such as the turnover reports you requested). We withheld the turnover report attachments that you are requesting under IC 5-14-3-4(b)(6), and separated them from the disclosable information in the body of the emails. Our letter explained that we were providing disclosable portions of records, and that we were withholding other records in their entirety. We determined that certain records needed to be withheld in their entirety, and were judicious in making such determinations. Further, we rely on prior opinions issued by the Public Access Counselor (PAC) where the PAC has opined that withholding a record as deliberative under (b)(6) does not violate the APRA as long as the record is deliberative and that such nondisclosure is not done to avoid a more thorough approach to responding to an APRA request. (See Opinions of the Public Access Counselor 18-FC-79 and 16-FC-23). Here, we were thorough in our review of records, which is why we included the specific numbers stating how many records were deemed responsive and then how many were withheld, with the specific APRA exemption noted, rather than simply stating that records were being withheld as deliberative without such detail explained.

3. "Your letter noted that "information from these records that is nonresponsive" were redacted. Please also include that information.
4. An email from May 19, 2017, that includes an email from May 18, 2017, contains extensive redactions. What exemption is cited for this record?"
5. Please also include the personal email addresses that were redacted. Note that we are also considerate of personal information we receive through public records request.
6. For the one record that was exempted under 5-14-3-4(b)(7), could you please tell me how any correspondence among more than one person would amount to the functional equivalent of a diary or journal? Diaries and journals are typically personal endeavors written for and by oneself.

The extensive redaction in the May 18, 2017 email is the nonresponsive material noted in the letter. It did not relate to your specific request, and we are declining to provide this portion of the email chain based on a request simply asking for the nonresponsive information. If the nonresponsive records are determined responsive and disclosable to any future requests submitted, it will be provided at that time. We also decline to provide the redacted email addresses that were

included the responsive and disclosable records. The redacted email addresses were not what was originally requested.

We provided the records that were requested. Further, certain addresses were redacted in accordance with the discretionary exemption noted in 5-14-3-4(b)(10).

You also asked about the record exempted under IC 5-14-3-4(b)(7) – this was actually an email that an employee wrote and sent to herself – it was a record written for and by that employee, for her own personal use.

Request 2 Follow-ups:

7. “We ask that the Attorney General's Office re-consider its denial of releasing calendar entries. As Attorney Hill is the state's top legal officer and a public advocate for smart and accountable governance, his calendar entries are in the public interest.

8. Were there no emails, receipts and/or other reports responsive to this request?

As stated in the letter, our office exercises the exemption for employee calendars uniformly among all employees and among all requests received. Therefore, we decline to release these calendar entries.

Your request was for “Documentation relating to any state resources utilized by you or your office to facilitate your activities, travel or schedule on March 14 and March 15, 2018.” If you are looking for other records, please state what records you are looking for with reasonable particularity. For example, a request for emails should state that it is looking for email records and meet the parameters of particularity listed in 17-FC-40: “a named sender, a named recipient, a timeframe of six-months or less, and an identified subject matter and/or keywords for each message.” If you are requesting other records that may have been created during or after any travel or activities on those dates, please let us know what you are looking for.

I hope this helps.

Thank you,

Stephanie Mullaney

Deputy Attorney General, Advisory Section

Office of Attorney General Curtis Hill

302 West Washington Street

IGCS-5th Floor

Indianapolis, Indiana 46204

P: 317.232.6285 F: 317.232.7979

Stephanie.Mullaney@atg.in.gov



From: Mullaney, Stephanie

Sent: Thursday, December 20, 2018 10:52 AM

To: 'Martin, Ryan' <Ryan.Martin@indystar.com>

Subject: RE: APRA - Follow-Up to July 11, 2018 Request

Ryan,

Sending a quick response to confirm and acknowledge that I received your follow-up questions and requests. I will look into this and get back to you as soon as I can.

Re: APRA - Follow-Up to July 11, 2018 Request

Martin, Ryan

Wed 1/2/2019 12:13 PM

Sent Items

To: Mullaney, Stephanie <stephanie.mullaney@atg.in.gov>;

Hello, Stephanie. Thank you for the detailed explanations and quick follow-up. I have another follow-up regarding the redacted email (from May 19, 2017 that includes text from May 18, 2017) and email addresses I referenced in my prior request.

We would like copies of those records in their entirety, including parts of the May 19, 2017 email that is both responsive and non-responsive to the original request I submitted several months ago. Any redactions in those records — including portions of an email or the email addresses — should be tied to something in state statute. I cannot find anywhere in APRA that enables agencies to selectively withhold portions of such a record unless that portion may be exempted as non-disclosable. If you have a statutory reason for exempting the portions of those records, please let me know.

This same request may be applied to any records that contain those email addresses I referenced in my Dec. 19 request. I don't see a statutory reason for exempting those portions of the public record so I would like a copy of that record in its entirety, including the email addresses.

Please let me know if this is hard to follow ... we're referencing multiple emails at this point! But I tried to be clear. Thanks again, Stephanie.

Ryan Martin

Public Safety Reporter

The Indianapolis Star

Mobile: 317.490.5684

Office: 317.444.6294

ryan.martin@indystar.com

[@ryanmartin](#)

[facebook.com/ryanmartin87](https://www.facebook.com/ryanmartin87)

indystar.com

From: Mullaney, Stephanie <stephanie.mullaney@atg.in.gov>

Sent: Friday, December 21, 2018 3:10:43 PM

To: Martin, Ryan

Subject: RE: APRA - Follow-Up to July 11, 2018 Request

Ryan,

Please see the below responses to your eight questions (six for Request 1 and two for Request 2) below. Many of your questions had related answers, so I re-grouped the questions together accordingly and placed our response below the group of questions.

Request 1 Follow-Ups:

RE: APRA - Follow-Up to July 11, 2018 Request

Mullaney, Stephanie <stephanie.mullaney@atg.in.gov>

Mon 1/7/2019 3:15 PM

To: Martin, Ryan <Ryan.Martin@indystar.com>;

Ryan:

Thanks for the follow up – I think I follow your additional email, and below are our office’s responses to your second follow up questions:

Regarding your request for the non-responsive email records, we again decline to provide the nonresponsive emails that were included in a chain with separate responsive emails based on a simple follow-up request for nonresponsive emails. We were under no obligation to provide emails in email chains that were nonresponsive, and although providing additional nonresponsive materials can indeed be helpful, these nonresponsive emails were in no way related to the responsive emails provided and would not provide any helpful context to the responsive emails that were disclosed (see 13-INF-56). Further, APRA requests must be reasonably particular, and a request simply asking for the nonresponsive emails is not reasonably particular. We provided you with the emails that were responsive, and we did not provide the emails that were nonresponsive, as we were under no obligation to provide nonresponsive emails.

Regarding your second question, we also decline to provide the redacted email addresses - your follow-up requests for the email addresses is like a request for information, and we are not required to respond to requests for information under the APRA. We have provided you with the records you requested.

Thank you again.

Best,

Stephanie Mullaney

Deputy Attorney General, Advisory Section

Office of Attorney General Curtis Hill

302 West Washington Street

IGCS-5th Floor

Indianapolis, Indiana 46204

P: 317.232.6285 F: 317.232.7979

Stephanie.Mullaney@atg.in.gov



From: Martin, Ryan [mailto:Ryan.Martin@indystar.com]

Sent: Wednesday, January 2, 2019 12:14 PM

To: Mullaney, Stephanie <stephanie.mullaney@atg.in.gov>

Subject: Re: APRA - Follow-Up to July 11, 2018 Request